

## Brigham Young University Law School BYU Law Digital Commons

---

### Utah Supreme Court Briefs (1965 –)

---

1979

# Dale Pierre v Lawrence Morris : Brief of Appellant in Support of Petition for Rehearing

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

D. Gilbert Athay; Robert Van Sciver; Randall Gaither; G. Fred Metos; Ronald J. Yengich; Attorneys for Appellant;

Robert B. Hansen; Attorney for Respondent;

---

### Recommended Citation

Petition for Rehearing, *Pierre v. Morris*, No. 16169 (Utah Supreme Court, 1979).

[https://digitalcommons.law.byu.edu/uofu\\_sc2/1513](https://digitalcommons.law.byu.edu/uofu_sc2/1513)

This Petition for Rehearing is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

IN THE SUPREME COURT OF THE STATE OF UTAH

DALE S. PIERRE,

Petitioner-Appellant.

-vs-

LAWRENCE MORRIS, As Warden  
of the Utah State Prison,

Respondent-Appellee.

-----  
APPELLANT'S BRIEF IN SUPPORT OF PETITION  
-----

D. Gilbert Athay  
Lawyer for Petitioner-Appellant  
72 East 400 South, Suite 200  
Salt Lake City, Utah 84111

Fred Metos  
Lawyer for Petitioner-Appellant  
333 South 200 East  
Salt Lake City, Utah 84111

ROBERT HANSEN  
Attorney General  
236 State Capitol  
Salt Lake City, Utah 84114

Attorney for Respondent

IN THE SUPREME COURT OF THE STATE OF UTAH

-----

DALE S. PIERRE, :  
Petitioner-Appellant, :  
-vs- : Case No. 16168  
LAWRENCE MORRIS, As Warden :  
of the Utah State Prison, :  
Respondent-Appellee. :

-----

APPELLANT'S BRIEF IN SUPPORT OF PETITION FOR REHEARING

-----

D. Gilbert Athay  
Lawyer for Petitioner-Appellant  
72 East 400 South, Suite 325  
Salt Lake City, Utah 84111

Fred Metos  
Lawyer for Petitioner-Appellant  
333 South 200 East  
Salt Lake City, Utah 84111

ROBERT HANSEN  
Attorney General  
236 State Capitol  
Salt Lake City, Utah 84114

Attorney for Respondent

## TABLE OF CONTENTS

### ARGUMENT

#### POINT I . . . . .Page 1

THE COURT'S SUMMARY REJECTION OF APPELLANT'S CLAIMS RELATIVE TO THE CONSTITUTIONALITY OF THE UTAH DEATH PENALTY STATUTES APPLIED IN THIS CASE IS INCONSISTENT WITH THE STANDARDS REQUIRED TO BE MET IN CAPITAL CASES AND IS INCONSISTENT WITH THE COURT'S RECENT DECISION IN STATE VS. BROWN, NO. 15481 (FEBRUARY 7, 1980).

#### POINT II. - . . . .Page 1

THE COURT'S SUMMARY REJECTION OF PETITIONER'S CLAIM THAT THE METHOD OF EXECUTION IS UNCONSTITUTIONAL FAILS TO CONSIDER THE FACTUAL INFORMATION PETITIONER HAS SOUGHT TO PRODUCE IN SUPPORT OF HIS CONTENTION.

#### POINT III . . . . .Page 2

THE RULING OF THIS COURT IN THE COMPANION CASE OF ANDREWS VS. MORRIS, SUPREME COURT CASE NO. 16168 (FEBRUARY 13, 1980) AS CITED AND APPLIED TO THE CASE AT BAR IS INCONSISTENT WITH THIS COURT'S HOLDING IN MARTINEZ VS. SMITH 602 P2d 700 (UTAH 1979) WITH RESPECT TO THE TREATMENT OF A MOTION TO DISMISS ON A PETITION FOR A WRIT OF HABEAS CORPUS AND RESULTS IN A DENIAL OF DUE PROCESS OF LAW.

#### CONCLUSION . . . . .Page 5

### TABLE OF AUTHORITIES

Andrews v. Morris	___ P2d ___ 1980	. . . . .	Page 3
Bell v. Burgon	402 U.S. 535 (1971)	. . . . .	Page 4
Goldberg v. Kell	397 U.S. 254 (1970)	. . . . .	Page 5
Martinez v. Smith	602 P2d 700 (Utah 1979)	. . . . .	Page 2,4
Scherbert v. Verner	374 U.S. 398 (1963)	. . . . .	Page 5
Slochower v. Bd. of Ed.	350 U.S. 551 (1956)	. . . . .	Page 5
Speeser v. Randall	357 U.S. 513 (1958)	. . . . .	Page 5

## POINT I

THE COURT'S SUMMARY REJECTION OF APPELLANT'S CLAIMS  
RELATIVE TO THE CONSTITUTIONALITY OF THE UTAH DEATH PENALTY  
STATUTES APPLIED IN THIS CASE IS INCONSISTENT WITH THE  
STANDARDS REQUIRED TO BE MET IN CAPITAL CASES AND IS IN-  
CONSISTENT WITH THE COURT'S RECENT DECISION IN STATE VS.  
BROWN, NO. 15481 (FEBRUARY 7, 1980).

Petitioner-Appellant herewith incorporates by reference  
the argument submitted in Point I of Appellant's Brief in  
support of Petition for rehearing in ANDREWS VS. MORRIS,  
Case No. 16168.

## POINT II

THE COURT'S SUMMARY REJECTION OF PETITIONER'S CLAIM  
THAT THE METHOD OF EXECUTION IS UNCONSTITUTIONAL FAILS TO  
CONSIDER THE FACTUAL INFORMATION PETITIONER HAS SOUGHT TO  
PRODUCE IN SUPPORT OF HIS CONTENTION.

Petitioner-Appellant herewith incorporates by reference  
the argument submitted in Point III of Appellant's Brief in  
support of Petition for rehearing in ANDREWS VS. MORRIS,  
Case No. 16168.

### POINT III

THE RULING OF THIS COURT IN THE COMPANION CASE OF ANDREWS VS. MORRIS, SUPREME COURT CASE NO. 16168 (FEBRUARY 13, 1980) AS CITED AND APPLIED TO THE CASE AT BAR IS INCONSISTENT WITH THIS COURT'S HOLDING IN MARTINEZ VS. SMITH 602 P2d 700 (UTAH 1979) WITH RESPECT TO THE TREATMENT OF A MOTION TO DISMISS ON A PETITION FOR A WRIT OF HABEAS CORPUS AND RESULTS IN A DENIAL OF DUE PROCESS OF LAW.

In MARTINEZ VS. SMITH, 602 P2d 700 (Utah, 1979), the Petitioner was challenging the propriety of his guilty plea to the offense of second degree murder. In his petition for Writ of Habeas Corpus and Memorandum in Support of the Petition, he alleged that his counsel had coerced him into the plea, and that his counsel had not fully investigated the case. The District Court granted the Respondent's Motion to Dismiss and the case was appealed. In holding that the trial court's granting the Motion to Dismiss was improper, the Court stated,

By our decision herein we do not mean to be understood as suggesting or even implying that the petitioner's allegations are true. (We interpose the observation that Mr. Craine is an attorney of good repute who has had considerable practice in the field of criminal law.) But in the face of a motion to dismiss, the court should regard them as true, deny the motion, and proceed to determine the facts.

Considering the petition in the light of what has just been said, it is our conclusion that it warrants inquiry into and determination as to the facts alleged 602 P2d 700, 702.

In the case at bar, the Appellant made a motion in the District Court to stay his pending execution, primarily to allow counsel time to prepare memorandum in support of his Petition for Writ of Habeas Corpus. The Respondent moved to dismiss the petition and that motion was granted. Petitioner raised this issue in the appeal in this case, arguing that the Motion to Dismiss was improperly granted because the trial court failed to regard Petitioner's allegations as true. With respect to that issue, the plurality opinion in ANDREWS VS. MORRIS, \_\_\_\_\_ P2d \_\_\_\_\_, Utah Supreme Court Case No. 16168 (Filed February 13, 1980), stated,

Andrew's second assertion of error is that the trial court applied the doctrine of res adjudicata [sic] without finding facts and without the entire record before it. In so doing, he fails to recognize the unique nature of post-conviction proceedings. Although the proceedings are civil, they are not governed by the general rules of civil procedure, but specifically by said Rule 65B (i) which mandates that the complainant (petitioner) shall set forth the factual data in support of his claims in plain and concise terms, shall state whether or not the legality or constitutionality of his commitment or confinement has been previously adjudged, and if he shall have instituted prior proceedings for relief, the reasons for the denial thereof. In such case, if it is apparent to the court that the matter has already been adjudged in such prior proceedings, it shall forthwith dismiss the complaint.

In light of the foregoing provisions of the Rule, and in light of the long-established doctrine of waiver, the trial court was clearly and simply called upon to determine whether the issues raised in the petition were or could have been raised on appeal. It was not necessary to look beyond the pleadings and the documents of record in order to determine the legal sufficiency of

the petition and our review thereof causes us to conclude that the court did not err in dismissing the petition. Utah Supreme Court Advance Sheet, page 8.

As can easily be seen, the opinions in the case at bar and its companion case and MARTINEZ VS. SMITH are in conflict. It is possible to resolve this conflict on the basis that the factual allegations made in MARTINEZ VS. SMITH, supra, were more specific than those made in the case at bar. However, a close reading of this court's opinion in MARTINEZ VS. SMITH, supra, reveals the fact that the court relied upon factual allegations made in the Petitioner's memorandum in addition to the allegations in the petition itself. The Appellant in the case at bar was not given the opportunity to submit a memorandum in the District Court. In light of this court's ruling in MARTINEZ VS. SMITH, supra, and the case law cited in Point V of Appellant's Brief, this court should grant a rehearing on Appellant's appeal.

Because of the inconsistencies in these rules, this court has denied the Appellant of his due process right to a hearing, specifically the right to a hearing for Habeas Corpus relief, as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 7 of the Constitution of Utah. Although this question has not been specifically dealt with by the courts in the context of Habeas Corpus relief, the United States Supreme Court has addressed it in other similar contexts. BELL VS. BURGON,

402US535 (1971) (suspension of a driver's license), SHERBERT VS.




VERNER, 374US398 (1963) (disqualification for unemployment compensation), SLOCHOWER VS. BOARD OF EDUCATION, 350US551 (1956) (discharge from public employment), SPEESER VS. RANDALL, 357US513 (1958) (denial of tax exemption), and GOLDBERG VS. KELLY, 397US254 (1970) (withdrawal of welfare benefits).

All of these cases involved the protection of some very important interests. However, none of these involved interests as crucial as those which the Appellant seeks to protect (life and liberty) through his petition for Writ of Habeas Corpus. For this reason and for the reasons and authorities cited in Point III of Appellant's Brief, the court's ruling in the case at bar constitutes a denial of his right to due process of law, requiring a rehearing on its merits.

#### CONCLUSION

The summary disposition of these issues has deprived the court of the benefit of a full evidentiary record and deliniation of the relevant facts, and has deprived Petitioner of the right to a full hearing on his factual and legal claims. Petitioner respectfully requests that the Court grant him a rehearing, so that he can fully present his claims to this court.

DATED this 4<sup>th</sup> day of March, 1980.

  
D. GILBERT ATHAY  
72 East 400 South, Suite 325  
Salt Lake City, Utah 84111